

110TH CONGRESS  
2D SESSION

# S. 2661

To prohibit the collection of identifying information of individuals by false, fraudulent, or deceptive means through the Internet, a practice known as “phishing”, to provide the Federal Trade Commission the necessary authority to enforce such prohibition, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2008

Ms. SNOWE (for herself, Mr. NELSON of Florida, and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

## A BILL

To prohibit the collection of identifying information of individuals by false, fraudulent, or deceptive means through the Internet, a practice known as “phishing”, to provide the Federal Trade Commission the necessary authority to enforce such prohibition, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Anti-Phishing Consumer Protection Act of 2008” or the  
6       “APCPA”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Phishing; related deceptive practices.
- Sec. 4. Civil actions by certain aggrieved parties.
- Sec. 5. Federal trade commission and other agency enforcement.
- Sec. 6. Penalties for fraud and related activity in connection with manipulation  
 of e-mail and website information.
- Sec. 7. Effect on other laws.
- Sec. 8. Separability.
- Sec. 9. Definitions.
- Sec. 10. Effective date.

3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

5 (1) Phishing is a method of online identity theft  
 6 that takes the form of fraudulent e-mails or fake  
 7 websites in order to deceive the recipient into giving  
 8 personal or financial account information.

9 (2) Phishing e-mails are becoming more sophis-  
 10 ticated by having malicious spyware attachments  
 11 that once opened covertly record the keystrokes and  
 12 passwords of computer users, or install malware  
 13 software.

14 (3) Approximately 59,000,000 phishing e-mails  
 15 are sent a day, and as many as 10,000,000 fake  
 16 messages are opened per day by recipients.

17 (4) According to Gartner, Inc., between August  
 18 2006 and August 2007, roughly 3,500,000 United  
 19 States computer users were victims of phishing  
 20 scams, and suffered losses totaling \$3,200,000,000.

1           (5) The Anti-Phishing Working Group found  
2           that in November 2007, there were over 28,000  
3           unique phishing reports received, which is an 8 per-  
4           cent increase from the year before.

5           (6) The United States is consistently 1 of the  
6           top 3 countries that host the most phishing websites.  
7           In November 2007, the United States hosted ap-  
8           proximately 24 percent of phishing websites.

9           (7) A form of phishing known as “Spear  
10          Phishing” targets companies and government agen-  
11          cies to gain unauthorized access to their computer  
12          systems in order to steal financial information, trade  
13          secrets, or even top secret military information.

14          (8) Both the Internal Revenue Service and the  
15          Federal Trade Commission have alerted taxpayers  
16          and consumers about phishing scams in which e-  
17          mails purporting to come from these agencies  
18          have—

19                 (A) been sent to fraudulently solicit infor-  
20                 mation from recipients; or

21                 (B) contained spyware attachments.

22          (9) Phishing operators utilize deceptive domain  
23          names for their schemes. They routinely register do-  
24          main names that mimic the addresses of well-known  
25          online merchants, and then set up websites that can

1 fool consumers into releasing personal and financial  
2 information.

3 (10) Phishing and other forms of identity theft  
4 continue to have a detrimental effect on e-commerce  
5 by eroding consumers' confidence in online trans-  
6 actions. According to a 2007 Javelin Strategy & Re-  
7 search study, 80 percent of Internet users are con-  
8 cerned about being victims of online identity theft.

9 (11) For small businesses that want to estab-  
10 lish an online presence, phishing schemes can per-  
11 manently undermine their ability to acquire the crit-  
12 ical trust from consumers that is necessary with e-  
13 commerce.

14 (12) Deceptive domain names, and the abuses  
15 for which they are used, threaten the integrity of do-  
16 main name system. Businesses, small and large, rely  
17 upon the integrity of the domain name registration  
18 to ensure that their brands aren't misrepresented.  
19 The World Intellectual Property Organization re-  
20 ported in April 2007, that the number of Internet  
21 domain name cybersquatting disputes increased 25  
22 percent in 2006.

23 (13) A 2006 Zogby Interactive poll found that  
24 78 percent of small business owners polled stated

1       that a less reliable Internet would damage their  
2       business.

3           (14) The Organization for Economic Co-oper-  
4       ation and Development has stated “businesses that  
5       provide false contact information can undermine the  
6       online experience of a consumer that decides to con-  
7       duct a WHOIS search about the business.”.

8           (15) WHOIS databases provide a crucial tool  
9       for businesses, the Federal Trade Commission, and  
10      other law enforcement agencies to track down brand  
11      infringement, online fraud, identity theft, and other  
12      online illegal activity, but are often hindered in their  
13      pursuit because the person responsible is hiding be-  
14      hind the anonymity of false registration information.

15   **SEC. 3. PHISHING; RELATED DECEPTIVE PRACTICES.**

16      (a) PHISHING; DECEPTIVE SOLICITATIONS OF IDEN-  
17   TIFYING INFORMATION.—

18           (1) IN GENERAL.—It is unlawful for any person  
19      to solicit identifying information from a protected  
20      computer if—

21           (A) the identifying information is solicited  
22           by means of false or fraudulent pretenses or  
23           misleading representations that the solicitation  
24           is being requested by, or made on behalf of, a

1 government office, nonprofit organization, busi-  
2 ness, or other entity; and

3 (B) such person has actual knowledge, or  
4 knowledge fairly implied on the basis of objec-  
5 tive circumstances, that its representations  
6 would be likely to mislead a computer user, act-  
7 ing reasonably under the circumstances, about  
8 a material fact regarding the solicitation of the  
9 identifying information (consistent with the cri-  
10 teria used in enforcement of section 5 of the  
11 Federal Trade Commission Act (15 U.S.C.  
12 45)).

13 (2) RULE OF CONSTRUCTION.—For purposes of  
14 paragraph (1)(A), a person that does not have the  
15 authority, express or implied, to make statements on  
16 behalf of a government office, nonprofit organiza-  
17 tion, business, or other entity purported to be rep-  
18 resented shall be considered to be in violation of  
19 such paragraph (1)(A) for having false or fraudulent  
20 pretenses or making misleading representations.

21 (3) CYBERSQUATTED DOMAIN NAMES.—It is  
22 unlawful for any person to use a domain name that  
23 is in violation of section 43 of the Trademark Act  
24 of 1946 (15 U.S.C. 1125), to solicit identifying in-

1       formation from a protected computer in violation of  
2       paragraph (1).

3       (b) DECEPTIVE OR MISLEADING DOMAIN NAMES.—

4           (1) IN GENERAL.—It is unlawful for any person  
5       to use a domain name in an electronic mail message,  
6       an instant message, or in connection with the dis-  
7       play of a webpage or an advertisement on a  
8       webpage, if—

9           (A) such domain name is or contains the  
10       identical name or brand name of, or is confus-  
11       ingly similar to the name or brand name of a  
12       government office, nonprofit organization, busi-  
13       ness, or other entity;

14          (B) such person has actual knowledge, or  
15       knowledge fairly implied on the basis of objec-  
16       tive circumstances, that the domain name would  
17       be likely to mislead a computer user, acting rea-  
18       sonably under the circumstances, about a mate-  
19       rial fact regarding the contents of such elec-  
20       tronic mail message, instant message, webpage,  
21       or advertisement (consistent with the criteria  
22       used in enforcement of section 5 of the Federal  
23       Trade Commission Act (15 U.S.C. 45)).

24          (2) CIRCUMSTANCES FACTORING INTO KNOWL-  
25       EDGE DETERMINATION.—In determining whether a

1 person meets the requirement established under  
2 paragraph (1)(B), the Commission shall consider cir-  
3 cumstances such as the—

4 (A) trademark or other intellectual prop-  
5 erty rights of a person, if any, in the domain  
6 name;

7 (B) extent to which the domain name con-  
8 sists of the legal name of the person or a name  
9 that is otherwise commonly used to identify  
10 that person;

11 (C) person's prior use, if any, of the do-  
12 main name in connection with the bona fide of-  
13 fering of any goods or services;

14 (D) person's bona fide noncommercial use  
15 of the domain name or fair use of a mark in  
16 a website accessible under the domain name;

17 (E) person's intent to divert consumers  
18 from the brand name or trademark owner's on-  
19 line location to a website accessible under the  
20 domain name that could harm the goodwill rep-  
21 resented by the brand name or the trademark,  
22 either for commercial gain or with the intent to  
23 tarnish or disparage the trademark, by creating  
24 a likelihood of confusion as to the source, spon-



1 sorship, affiliation, or endorsement of the  
2 website;

3 (F) person's offer to transfer, sell, or oth-  
4 erwise assign the domain name to the brand  
5 name or trademark owner or any third party  
6 for financial gain without having used, or hav-  
7 ing an intent to use, the domain name in the  
8 bona fide offering of any goods or services, or  
9 the person's prior conduct indicating a pattern  
10 of such conduct;

11 (G) person's—

12 (i) provision of material and mis-  
13 leading false contact information when ap-  
14 plying for the registration of the domain  
15 name;

16 (ii) intentional failure to maintain ac-  
17 curate contact information; or

18 (iii) prior conduct indicating a pattern  
19 of such conduct; and

20 (H) person's registration or acquisition of  
21 multiple domain names which the person knows  
22 are identical or confusingly similar to brand  
23 names or trademarks of others that are distine-  
24 tive at the time of registration of such domain  
25 names, or damaging to the brand name or dilu-

1           tive of famous trademarks of others that are fa-  
2           mous at the time of registration of such domain  
3           names, without regard to the goods or services  
4           of the parties.

5           (c) WHOIS DATABASE INFORMATION ACCURACY.—

6           (1) DOMAIN NAME REGISTRANTS ENGAGED IN  
7           COMMERCIAL ACTIVITIES.—It is unlawful for the  
8           registrant of a domain name used in any commercial  
9           activity to register such domain name in any  
10          WHOIS database or with any other domain name  
11          registration authority with false or misleading identi-  
12          fying information, including the registrant's name,  
13          physical address, telephone number, facsimile num-  
14          ber, or electronic mail address.

15          (2) DOMAIN NAME REGISTRARS, REGISTRIES  
16          AND OTHER AUTHORITIES.—It is unlawful for a do-  
17          main name registrar, registry or other domain name  
18          authority, directly or indirectly, via proxy or any  
19          other method, to replace or materially alter the con-  
20          tents of, or to shield, mask, block, or otherwise re-  
21          strict access to, any domain name registrant's name,  
22          physical address, telephone number, facsimile num-  
23          ber, electronic mail address, or other identifying in-  
24          formation in any WHOIS database or any other  
25          database of a domain name registration authority if

1       such registrar, registry, or domain name authority  
2       has received written notice, including via facsimile or  
3       electronic mail at such entity's facsimile number or  
4       electronic mail address of record, that the use of  
5       such domain name is in violation of any provision of  
6       this Act.

7   **SEC. 4. CIVIL ACTIONS BY CERTAIN AGGRIEVED PARTIES.**

8       (a) ACTION BY STATES.—

9           (1) CIVIL ACTIONS.—In any case in which the  
10       attorney general of a State, or an official or agency  
11       of a State, has reason to believe that an interest of  
12       the residents of that State has been or is threatened  
13       or adversely affected by any person who violates this  
14       Act, the attorney general, official, or agency of the  
15       State, as *parens patriae*, may bring a civil action on  
16       behalf of the residents of the State in a district  
17       court of the United States of appropriate jurisdic-  
18       tion to—

19           (A) enjoin further violation of this Act by  
20       that person;

21           (B) enforce compliance with this Act; or

22           (C) obtain civil penalties or damages on  
23       behalf of the residents of the State.

24       (2) NOTICE.—

1 (A) IN GENERAL.—Before filing an action  
2 under this section, the attorney general of the  
3 State involved shall provide to the Federal  
4 Trade Commission—

- 5 (i) a written notice of that action; and  
6 (ii) a copy of the complaint for that  
7 action.

8 (B) EXCEPTION.—Subparagraph (A) shall  
9 not apply with respect to the filing of an action  
10 by an attorney general of a State under this  
11 section, if the attorney general of a State deter-  
12 mines that it is not feasible to provide the no-  
13 tice described in subparagraph (A) before the  
14 filing of the action.

15 (C) NOTIFICATION WHEN PRACTICABLE.—  
16 In an action described under subparagraph (B),  
17 the attorney general of a State shall provide the  
18 written notice and the copy of the complaint to  
19 the Federal Trade Commission as soon after  
20 the filing of the complaint as practicable.

21 (3) FEDERAL TRADE COMMISSION AUTHOR-  
22 ITY.—Upon receiving notice under paragraph (2),  
23 the Federal Trade Commission shall have the right  
24 to—

1 (A) move to stay the action, pending the  
 2 final disposition of a pending Federal pro-  
 3 ceeding or action as described in paragraph (4);

4 (B) intervene in an action brought under  
 5 paragraph (1); and

6 (C) file petitions for appeal.

7 (4) PENDING PROCEEDINGS.—If the Federal  
 8 Trade Commission has instituted a proceeding or  
 9 civil action for a violation of this Act, no attorney  
 10 general of a State may, during the pendency of such  
 11 proceeding or civil action, bring an action under this  
 12 section against any defendant named in such civil  
 13 action for any violation that is alleged in that civil  
 14 action.

15 (5) RULE OF CONSTRUCTION.—For purposes of  
 16 bringing any civil action under paragraph (1), noth-  
 17 ing in this Act shall be construed to prevent an at-  
 18 torney general of a State from exercising the powers  
 19 conferred on the attorney general by the laws of that  
 20 State to—

21 (A) conduct investigations;

22 (B) administer oaths and affirmations; or

23 (C) compel the attendance of witnesses or  
 24 the production of documentary and other evi-  
 25 dence.

1 (6) VENUE; SERVICE OF PROCESS.—

2 (A) VENUE.—Any action brought under  
3 this section may be brought in the district court  
4 of the United States that meets applicable re-  
5 quirements relating to venue under section  
6 1391 of title 28, United States Code.

7 (B) SERVICE OF PROCESS.—In an action  
8 brought under this subsection process may be  
9 served in any district in which the defendant—

10 (i) is an inhabitant; or

11 (ii) may be found.

12 (b) ACTIONS BY INTERACTIVE COMPUTER SERV-  
13 ICE.—An interactive computer service adversely affected  
14 by a violation of this Act may bring a civil action in any  
15 district court of the United States with jurisdiction over  
16 the person who committed such violation to—

17 (1) enjoin further violation of this Act by that  
18 person;

19 (2) enforce compliance with this Act;

20 (3) recover damages for any monetary loss in-  
21 curred by the interactive computer service as result  
22 of such violation; or

23 (4) obtain such further and other relief as the  
24 court may deem appropriate, including punitive

1 damages if the court determines that the defendant  
2 committed the violation willfully and knowingly.

3 (c) ACTIONS BY OWNERS OF TRADEMARK.—Any per-  
4 son who is the owner of a trademark that is used or other-  
5 wise involved in the commission of a violation of this Act  
6 may bring a civil action in any district court of the United  
7 States with jurisdiction over the person who committed  
8 such violation to—

9 (1) enjoin further violation of this Act by that  
10 person;

11 (2) enforce compliance with this Act;

12 (3) recover damages for any monetary loss in-  
13 curred by such owner as result of such violation; or

14 (4) obtain such further and other relief as the  
15 court may deem appropriate, including punitive  
16 damages if the court determines that the defendant  
17 committed the violation willfully and knowingly.

18 **SEC. 5. FEDERAL TRADE COMMISSION AND OTHER AGENCY**  
19 **ENFORCEMENT.**

20 (a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR  
21 PRACTICE.—Except as provided in subsection (b), this Act  
22 shall be enforced by the Commission as if the violation  
23 of this Act were an unfair or deceptive act or practice pro-  
24 scribed under section 18(a)(1)(B) of the Federal Trade  
25 Commission Act (15 U.S.C. 57a(a)(1)(B)).

1 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-  
 2 CIES.—Compliance with this Act shall be enforced—

3 (1) under section 8 of the Federal Deposit In-  
 4 surance Act (12 U.S.C. 1818), in the case of—

5 (A) national banks, Federal branches, and  
 6 Federal agencies of foreign banks, by the Office  
 7 of the Comptroller of the Currency;

8 (B) member banks of the Federal Reserve  
 9 System (other than national banks), branches  
 10 and agencies of foreign banks (other than Fed-  
 11 eral branches, Federal agencies, and insured  
 12 State branches of foreign banks), commercial  
 13 lending companies owned or controlled by for-  
 14 eign banks, organizations operating under sec-  
 15 tion 25 or 25A of the Federal Reserve Act (12  
 16 U.S.C. 601 and 611), and bank holding compa-  
 17 nies, by the Board;

18 (C) banks insured by the Federal Deposit  
 19 Insurance Corporation (other than members of  
 20 the Federal Reserve System) and insured State  
 21 branches of foreign banks, by the Board of Di-  
 22 rectors of the Federal Deposit Insurance Cor-  
 23 poration; and

24 (D) savings associations the deposits of  
 25 which are insured by the Federal Deposit In-



1           surance Corporation, by the Director of the Of-  
2           fice of Thrift Supervision;

3           (2) under the Federal Credit Union Act (12  
4           U.S.C. 1751 et seq.) by the Board of the National  
5           Credit Union Administration with respect to any  
6           federally insured credit union;

7           (3) under the Securities Exchange Act of 1934  
8           (15 U.S.C. 78a et seq.) by the Securities and Ex-  
9           change Commission with respect to any broker or  
10          dealer;

11          (4) under the Investment Company Act of 1940  
12          (15 U.S.C. 80a–1 et seq.) by the Securities and Ex-  
13          change Commission with respect to investment com-  
14          panies;

15          (5) under the Investment Advisers Act of 1940  
16          (15 U.S.C. 80b–1 et seq.) by the Securities and Ex-  
17          change Commission with respect to investment ad-  
18          visers registered under that Act;

19          (6) under State insurance law in the case of  
20          any person engaged in providing insurance, by the  
21          applicable State insurance authority of the State in  
22          which the person is domiciled, subject to section 104  
23          of the Gramm-Bliley-Leach Act (15 U.S.C. 6701),  
24          except that in any State in which the State insur-  
25          ance authority elects not to exercise this power, the

1 enforcement authority pursuant to this Act shall be  
2 exercised by the Commission in accordance with sub-  
3 section (a);

4 (7) under part A of subtitle VII of title 49,  
5 United States Code, by the Secretary of Transpor-  
6 tation with respect to any air carrier or foreign air  
7 carrier subject to that part;

8 (8) under the Packers and Stockyards Act,  
9 1921 (7 U.S.C. 181 et seq.) (except as provided in  
10 section 406 of that Act (7 U.S.C. 226, 227)), by the  
11 Secretary of Agriculture with respect to any activi-  
12 ties subject to that Act;

13 (9) under the Farm Credit Act of 1971 (12  
14 U.S.C. 2001 et seq.) by the Farm Credit Adminis-  
15 tration with respect to any Federal land bank, Fed-  
16 eral land bank association, Federal intermediate  
17 credit bank, or production credit association; and

18 (10) under the Communications Act of 1934  
19 (47 U.S.C. 151 et seq.) by the Federal Communica-  
20 tions Commission with respect to any person subject  
21 to the provisions of that Act.

22 (c) EXERCISE OF CERTAIN POWERS.—For the pur-  
23 pose of the exercise by any agency referred to in sub-  
24 section (b) of its powers under any Act referred to in that  
25 subsection, a violation of this Act is deemed to be a viola-

1 tion of a Federal Trade Commission trade regulation rule.  
2 In addition to its powers under any provision of law spe-  
3 cifically referred to in subsection (b), each of the agencies  
4 referred to in that subsection may exercise, for the pur-  
5 pose of enforcing compliance with any requirement im-  
6 posed under this Act, any other authority conferred on it  
7 by law.

8 (d) ACTIONS BY THE COMMISSION.—The Commis-  
9 sion shall prevent any person from violating this Act in  
10 the same manner, by the same means, and with the same  
11 jurisdiction, powers, and duties as though all applicable  
12 terms and provisions of the Federal Trade Commission  
13 Act (15 U.S.C. 41 et seq.) were incorporated into and  
14 made a part of this Act. Any entity that violates any provi-  
15 sion of that subtitle is subject to the penalties and entitled  
16 to the privileges and immunities provided in the Federal  
17 Trade Commission Act in the same manner, by the same  
18 means, and with the same jurisdiction, power, and duties  
19 as though all applicable terms and provisions of the Fed-  
20 eral Trade Commission Act were incorporated into and  
21 made a part of that subtitle.

22 (e) AVAILABILITY OF CEASE AND DESIST ORDERS  
23 AND INJUNCTIVE RELIEF WITHOUT SHOWING OF  
24 KNOWLEDGE.—Notwithstanding any other provision of  
25 this Act, in any proceeding or action pursuant to sub-

1 section (a), (b), (c), or (d) of this section to enforce com-  
 2 pliance, through an order to cease and desist or an injunc-  
 3 tion, with the provisions of section 3, neither the Commis-  
 4 sion nor the Federal Communications Commission shall  
 5 be required to allege or prove the state of mind required  
 6 by such section or subparagraph.

7 (f) ENFORCEMENT BY STATES.—

8 (1) CIVIL ACTION.—In any case in which the  
 9 attorney general of a State, or an official or agency  
 10 of a State, has reason to believe that an interest of  
 11 the residents of that State has been or is threatened  
 12 or adversely affected by any person who violates the  
 13 provisions of section 3, or who engages in a pattern  
 14 or practice that violates the provisions of section 3,  
 15 the attorney general, official, or agency of the State,  
 16 as *parens patriae*, may bring a civil action on behalf  
 17 of the residents of the State in a district court of the  
 18 United States of appropriate jurisdiction—

19 (A) to enjoin further violation of section 3  
 20 of this Act by the defendant; or

21 (B) to obtain damages on behalf of resi-  
 22 dents of the State, in an amount equal to the  
 23 greater of—

24 (i) the actual monetary loss suffered  
 25 by such residents; or

1 (ii) the amount determined under  
2 paragraph (3).

3 (2) AVAILABILITY OF INJUNCTIVE RELIEF  
4 WITHOUT SHOWING OF KNOWLEDGE.—Notwith-  
5 standing any other provision of this Act, in a civil  
6 action under paragraph (1)(A), the attorney general,  
7 official, or agency of the State shall not be required  
8 to allege or prove the state of mind required by sec-  
9 tion 3.

10 (3) STATUTORY DAMAGES.—

11 (A) IN GENERAL.—For purposes of para-  
12 graph (1)(B)(ii), the amount determined under  
13 this paragraph is the amount calculated by mul-  
14 tiplying the number of violations by up to \$250.

15 (B) LIMITATION.—For any violation of  
16 section 3, the amount determined under sub-  
17 paragraph (A) may not exceed \$2,000,000.

18 (C) AGGRAVATED DAMAGES.—The court  
19 may increase a damage award to an amount  
20 equal to not more than 3 times the amount oth-  
21 erwise available under this paragraph if—

22 (i) the court determines that the de-  
23 fendant committed the violation willfully  
24 and knowingly; or

1 (ii) the defendant's unlawful activity  
2 included a violation of section 3(a)(3).

3 (D) REDUCTION OF DAMAGES.—In assess-  
4 ing damages under subparagraph (A), the court  
5 may consider whether—

6 (i) the defendant has established and  
7 implemented, with due care, commercially  
8 reasonable practices and procedures de-  
9 signed to effectively prevent such viola-  
10 tions; or

11 (ii) the violation occurred despite com-  
12 mercially reasonable efforts to maintain  
13 compliance the practices and procedures to  
14 which reference is made in clause (i).

15 (4) ATTORNEY FEES.—In the case of any suc-  
16 cessful action under paragraph (1), the court, in its  
17 discretion, may award the costs of the action and  
18 reasonable attorney fees to the State.

19 (5) RIGHTS OF FEDERAL REGULATORS.—The  
20 State shall serve prior written notice of any action  
21 under paragraph (1) upon the Federal Trade Com-  
22 mission or the appropriate Federal regulator deter-  
23 mined under subsection (b) and provide the Commis-  
24 sion or appropriate Federal regulator with a copy of  
25 its complaint, except in any case in which such prior

1 notice is not feasible, in which case the State shall  
 2 serve such notice immediately upon instituting such  
 3 action. The Federal Trade Commission or appro-  
 4 priate Federal regulator shall have the right—

5 (A) to intervene in the action;

6 (B) upon so intervening, to be heard on all  
 7 matters arising therein;

8 (C) to remove the action to the appropriate  
 9 United States district court; and

10 (D) to file petitions for appeal.

11 (6) CONSTRUCTION.—For purposes of bringing  
 12 any civil action under paragraph (1), nothing in this  
 13 Act shall be construed to prevent an attorney gen-  
 14 eral of a State from exercising the powers conferred  
 15 on the attorney general by the laws of that State  
 16 to—

17 (A) conduct investigations;

18 (B) administer oaths or affirmations; or

19 (C) compel the attendance of witnesses or  
 20 the production of documentary and other evi-  
 21 dence.

22 (7) VENUE; SERVICE OF PROCESS.—

23 (A) VENUE.—Any action brought under  
 24 paragraph (1) may be brought in the district  
 25 court of the United States that meets applicable

1 requirements relating to venue under section  
2 1391 of title 28, United States Code.

3 (B) SERVICE OF PROCESS.—In an action  
4 brought under paragraph (1), process may be  
5 served in any district in which the defendant—

6 (i) is an inhabitant; or

7 (ii) maintains a physical place of busi-  
8 ness.

9 (8) LIMITATION ON STATE ACTION WHILE FED-  
10 ERAL ACTION IS PENDING.—If the Commission, or  
11 other appropriate Federal agency under subsection  
12 (b), has instituted a civil action or an administrative  
13 action for violation of this Act, no State attorney  
14 general, or official or agency of a State, may bring  
15 an action under this subsection during the pendency  
16 of that action against any defendant named in the  
17 complaint of the Commission or the other agency for  
18 any violation of this Act alleged in the complaint.

19 (9) REQUISITE SCIENTER FOR CERTAIN CIVIL  
20 ACTIONS.—Except as provided in this section, in a  
21 civil action brought by a State attorney general, or  
22 an official or agency of a State, to recover monetary  
23 damages for a violation of this Act, the court shall  
24 not grant the relief sought unless the attorney gen-  
25 eral, official, or agency establishes that the defend-



1 ant acted with actual knowledge, or knowledge fairly  
2 implied on the basis of objective circumstances, of  
3 the act or omission that constitutes the violation.

4 **SEC. 6. PENALTIES FOR FRAUD AND RELATED ACTIVITY IN**  
5 **CONNECTION WITH MANIPULATION OF E-**  
6 **MAIL AND WEBSITE INFORMATION.**

7 (a) IN GENERAL.—Chapter 47 of title 18, United  
8 States Code, is amended by inserting after section 1030  
9 the following:

10 **“§ 1030A. Fraud and related activity in connection**  
11 **with manipulation of e-mail and website**  
12 **information**

13 “(a) WEBSITE.—Whoever knowingly, and with the  
14 intent to defraud, displays, or procures the display to the  
15 general public of a webpage or domain name that falsely  
16 or deceptively represents itself as another’s business and  
17 uses that website or domain name to induce, request, ask,  
18 or solicit any person to transmit, submit, or provide any  
19 means of identification to another shall be fined under this  
20 title, imprisoned not more than 5 years, or both.

21 “(b) MESSENGER.—Whoever knowingly, and with the  
22 intent to defraud, initiates or sends an electronic mail  
23 message or instant message that falsely or deceptively rep-  
24 resents itself as another’s business and uses that message  
25 to induce, request, ask, or solicit the recipient, directly or

1 indirectly, to provide, submit, or relate any means of iden-  
 2 tification to another shall be fined under this title, impris-  
 3 oned not more than 5 years, or both.

4 “(c) ATTEMPT.—Whoever attempts to commit an of-  
 5 fense under subsection (a) or (b) shall be subject to the  
 6 same penalties as those prescribed in the offense under  
 7 such subsection.

8 “(d) EXEMPTION.—This section does not prohibit  
 9 any lawfully authorized investigative, protective, or intel-  
 10 ligence activity of a law enforcement agency of the United  
 11 States, a State, or a political subdivision of a State, or  
 12 of an intelligence agency of the United States.”.

13 (b) CONFORMING AMENDMENT TO CHAPTER ANAL-  
 14 YSIS.—The chapter analysis for chapter 47 of title 18,  
 15 United States Code, is amended by inserting after the  
 16 item for section 1030 the following new item:

“1030A. Fraud and related activity in connection with manipulation of email  
 and website information.”.

17 **SEC. 7. EFFECT ON OTHER LAWS.**

18 (a) FEDERAL LAW.—

19 (1) RULE OF CONSTRUCTION RELATING TO  
 20 FEDERAL CRIMINAL LAW.—Nothing in this Act shall  
 21 be construed to impair the enforcement of any sec-  
 22 tion of title 18, United States Code, or any other  
 23 Federal criminal statute.

1           (2) RULE OF CONSTRUCTION RELATING TO FTC  
2     ACT.—Nothing in this Act shall be construed to af-  
3     fect in any way the Commission’s authority to bring  
4     enforcement actions under the Federal Trade Com-  
5     mission Act for materially false or deceptive rep-  
6     resentations or unfair practices on the Internet.

7     (b) STATE LAW.—

8           (1) IN GENERAL.—Except as set forth under  
9     paragraph (2), with respect to State criminal stat-  
10    utes, the provisions of this Act shall supersede any  
11    statute, regulation, or rule of a State or political  
12    subdivision of a State that prohibits the solicitation  
13    of identifying information by means of materially  
14    false or deceptive representations or the use of de-  
15    ceptive or misleading domain names in the manner  
16    prohibited in this Act.

17           (2) STATE CRIMINAL PHISHING STATUTES.—

18           (A) PREEMPTED IF INCONSISTENT.—This  
19     Act shall not be construed as superseding, al-  
20     tering, or affecting any criminal statute in ef-  
21     fect in any State with regard to acts of  
22     phishing, except to the extent that such State  
23     statute is inconsistent with the provisions this  
24     Act, and then only to the extent of the incon-  
25     sistency.

1 (B) GREATER PROTECTION UNDER STATE  
 2 LAW.—For purposes of this section, a State  
 3 criminal statute is not inconsistent with the  
 4 provisions of this Act, if the State criminal stat-  
 5 ute affords greater protection to State residents  
 6 than the protection provided under this Act.

7 **SEC. 8. SEPARABILITY.**

8 If any provision of this Act or the application thereof  
 9 to any person or circumstance is held invalid, the remain-  
 10 der of this Act and the application of such provision to  
 11 other persons or circumstances shall not be affected.

12 **SEC. 9. DEFINITIONS.**

13 In this Act, the following definitions shall apply:

14 (1) COMMISSION.—The term “Commission”  
 15 means the Federal Trade Commission.

16 (2) DOMAIN NAME.—The term “domain name”  
 17 means any alphanumeric designation which is reg-  
 18 istered with or assigned by any domain name reg-  
 19 istrar, domain name registry, or other domain name  
 20 registration authority as part of an electronic ad-  
 21 dress on the Internet.

22 (3) ELECTRONIC MAIL ADDRESS.—The term  
 23 “electronic mail address” means a destination, com-  
 24 monly expressed as a string of characters, consisting  
 25 of a unique user name or mailbox (commonly re-

ferred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered.

(4) ELECTRONIC MAIL MESSAGE.—The term “electronic mail message” means a message sent to a unique electronic mail address.

(5) IDENTIFYING INFORMATION.—The term “identifying information” means any information that can be used in combination with a person’s name and address to access an individual’s financial accounts or to purchase goods and services, including an individual’s Social Security number, driver’s license number, or other State government identification number, financial account number, credit or debit card number, personal identification number, unique biometric data, automated or electronic signature, or financial account password.

(6) INITIATE.—The term “initiate” has the meaning given that term in section 3 of the CAN-SPAM Act of 2003 (15 U.S.C. 7702).

(7) INSTANT MESSAGE.—The term “instant message” means any communication between 1 person and another person made in real-time using the Internet.

1           (8) INTERACTIVE COMPUTER SERVICE.—The  
2       term “interactive computer service” has the meaning  
3       given that term in section 230(f) of the Communica-  
4       tions Act of 1934 (47 U.S.C. 230(f)).

5           (9) INTERNET.—The term “Internet” has the  
6       meaning given that term in the Internet Tax Free-  
7       dom Act (47 U.S.C. 151 note).

8           (10) INTERNET ACCESS SERVICE.—The term  
9       “Internet access service” has the meaning given that  
10      term in section 231(e)(4) of the Communications  
11      Act of 1934 (47 U.S.C. 231(e)(4)).

12          (11) INTERNET INFORMATION LOCATION  
13      TOOL.—The term “Internet information location  
14      tool” has the meaning given that term in section  
15      231 of the Communications Act of 1934 (47 U.S.C.  
16      231).

17          (12) RECIPIENT.—The term “recipient” has  
18      the meaning given that term in section 3 of the  
19      CAN-SPAM Act of 2003 (15 U.S.C. 7702).

20          (13) REGISTRANT.—The term “registrant”  
21      means the person that controls the usernames or  
22      passwords, billing options, and administrative fea-  
23      tures of a domain name.

1           (14) WEBPAGE.—The term “webpage” means a  
2           location, with respect to the World Wide Web, that  
3           has a—

4                   (A) single Uniform Resource Locator; or

5                   (B) single location with respect to the  
6           Internet, as such location may be prescribed by  
7           the Federal Trade Commission.

8           (15) WEBSITE.—The term “website” means a  
9           collection of webpages that are presented and made  
10          available by means of the World Wide Web as a sin-  
11          gle website or webpage with a—

12                   (A) common domain name; or

13                   (B) common ownership, management, or  
14          registration.

15          (16) WHOIS DATABASE.—The term “WHOIS  
16          database” means any Internet service used to  
17          query—

18                   (A) contact information about the reg-  
19          istrant of a domain name; or

20                   (B) ownership information about a reg-  
21          istered domain name or IP address.

1 **SEC. 10. EFFECTIVE DATE.**

2       This Act, and any amendments made by this Act,  
3 shall take effect on the date that is 90 days after the date  
4 of enactment of this Act.

○